

ESTTA Tracking number: **ESTTA806069**

Filing date: **03/08/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Spoonjack LLC
Granted to Date of previous extension	03/08/2017
Address	220 Lombard St. STE 217 San Francisco, CA 94111 UNITED STATES
Correspondence information	Tom Scharfeld Spoonjack LLC 220 Lombard St. STE 217 San Francisco, CA 94111 UNITED STATES tas@spoonjack.com Phone:415-318-2414

Applicant Information

Application No	86969629	Publication date	11/08/2016
Opposition Filing Date	03/08/2017	Opposition Period Ends	03/08/2017
Applicant	DTTM Operations LLC 725 Fifth Avenue New York, NY 10022 UNITED STATES		


Goods/Services Affected by Opposition

Class 009. First Use: 2015/09/21 First Use In Commerce: 2015/09/21 All goods and services in the class are opposed, namely: Computer software in the nature of mobile applications for users to access golfrelated information and features, namely, golf course information, GPS-enabled yardage guides, 3-D golf course views, digital scoring of golf matches, golf tournament and leaderboard standings, tee time reservations, real time weather conditions and predictions, news, events, promotions and offers related to golf courses, merchandise, events, retail dining and spas; Computer software in the nature of mobile applications for users to stream curated music playlists

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Fraud on the USPTO	In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)
Other	Amended identified goods and services outside the scope of original. Trademark Act Section 1(a).

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4607873	Application Date	12/30/2010
Registration Date	09/23/2014	Foreign Priority Date	NONE
Word Mark	ITRUMP		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2011/01/14 First Use In Commerce: 2011/01/20 Computer software for use in producing sound		

Related Proceedings	92059992, 92060672
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Attachments	85208303#TMSN.png(bytes) opp_trump_629.pdf(168519 bytes)
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Signature	/Tom Scharfeld/
Name	Tom Scharfeld
Date	03/08/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPOONJACK LLC d/b/a SPOONJACK,

Opposition No. _____

Opposer,

v.

DTTM OPERATIONS LLC,

Applicant.

App. No. 86/969,629

Filed: April 8, 2016

Mark: TRUMP

Published: November 8, 2016

NOTICE OF OPPOSITION

Spoonjack, LLC d/b/a Spoonjack, ("Opposer"), a California Limited Liability Company with a principal place of business at 220 Lombard St. STE 217, San Francisco, California, 94111, believes that it will be damaged by the issuance of a registration for the mark TRUMP in International Class 9, as applied for in Application Serial No. 86/969,629 (the "Application") and therefore opposes the same.

As grounds for this Opposition, it is alleged that:

1. Opposer is the owner of Registration No. 4,607,873 ("Opposer's Registration") for the mark ITRUMP ("Opposer's Mark") for "computer software for use in producing sound," in International Class 9, filed on December 30, 2010, with first use in interstate commerce of January 20, 2011.
2. On January 27, 2011, after Opposer filed its application and began use of its Mark, Donald J. Trump sent a demand letter to Opposer wherein he objected to Opposer's use and registration of Opposer's Mark. He asserted, *inter alia*, Registration No. 3,775,527 (TRUMP TYCOON) in International Class 9.
3. The following year, on January 12, 2012, Donald J. Trump filed a notice of opposition (Opposition No. 91203345) against Opposer's application, alleging likelihood of confusion, dilution, and false suggestion of a connection with Donald J. Trump ("Mr. Trump's Opposition"). In his notice of opposition, he did not claim ownership of any registrations in International Class 9.

4. On January 12, 2015, following Donald J. Trump's refusal to provide information on relevant marks, goods and services after several months of obstruction during discovery in Mr. Trump's Opposition, and his subsequent withdrawal, Opposer filed a consolidated petition to cancel (Cancellation No. 92060672) two registrations for computer game programs in International Class 9 owned by Donald J. Trump.
5. During the course of Cancellation No. 92060672, Mr. Trump assigned, *inter alia*, the two registrations subject to cancellation to Applicant on January 28, 2016. At that time, Mr. Trump was President of Applicant. In that proceeding, the Board, *inter alia*, joined Applicant as a defendant, granted in-part a motion to compel filed by Opposer, and required Applicant provide to Opposer information subject to the order by March 31, 2016.
6. One day prior to the March 31, 2016 deadline, Applicant surrendered one of the registrations subject to cancellation in Cancellation No. 92060672, namely, Registration No. 3,775,527 for the mark TRUMP TYCOON.
7. On or about March 31, 2016, in response to the Board's order, Applicant served discovery responses wherein it identified "The Trump Golf App" for mobile devices running iOS or Android as a product showing use of the mark of the other registration subject to cancellation in Cancellation No. 92060672, namely, Registration No. 4,038,808 for the mark TRUMP for "computer game programs, namely, computer software for use in operating interactive single-player and multi-player games, with musical sound recordings, on video game machines."
8. Eight days after serving its responses, on April 8, 2016, Applicant filed the Application (Application No. 86/969,629) for the mark TRUMP for the following purported goods or services in International Class 9:
 - [c]omputer software in the nature of mobile applications for users to access golf related information and features, namely, golf course information, GPS-enabled yardage guides, 3-D golf course views, digital scoring of golf matches, golf tournament and leaderboard standings, tee time reservations,

real time weather conditions and predictions, news, events, promotions and offers related to golf courses, merchandise, events, retail dining and spas;

- streaming of curated music playlists.

9. Notably, in the Application, Applicant separately identified "streaming of curated music playlists" as distinct from its "[c]omputer software in the nature of mobile applications for users to access golf related information and features..."
10. Also, in the Application, Applicant submitted as specimens documents depicting the same "The Trump Golf App" it had identified in its discovery responses served 8 days prior.
11. Further, Applicant claimed September, 21, 2015 as its first use of Applicant's Mark in interstate commerce, years after Opposer's first use.
12. On August 28, 2016, Applicant amended "streaming of curated music playlists" (hereinafter, "Original Streaming Goods or Services") to "[c]omputer software in the nature of mobile applications for users to stream curated music playlists" (hereinafter, "Amended Streaming Goods or Services").
13. The Amended Streaming Goods or Services are encompassed by the "computer software for use in producing sound" of Opposer's Mark and Registration.

Amended Goods and Services Exceed Scope of Original

14. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 13 as if fully set forth herein.
15. Applicant's Amended Streaming Goods or Services are outside the scope of the "streaming of curated music playlists" it originally identified in its Application.
16. Accordingly, the Application is void with respect to the Amended Streaming Goods or Services pursuant to Section 1(a) of the Trademark Act.

Likelihood of Confusion

17. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 16 as if fully set forth herein.
18. The alleged first use date for Applicant's Mark and the filing date for Applicant's Application are years after the dates of Opposer's first use.

19. Applicant's Mark, as applied to its Amended Streaming Goods or Services, so resembles Opposer's Mark as to be likely to cause confusion, mistake, or deception.
20. Accordingly, registration of Applicant's Mark is in violation of Section 2(d) of the Trademark Act.

Fraud

21. Petitioner repeats and realleges each and every allegation set forth in Paragraphs 1 through 20 as if fully set forth herein.
22. In its Application, on or about April 8, 2016, Applicant, through its Vice President, Alan Garten, represented to the PTO that to the best of his knowledge and belief, no other person, firm, corporation or association has the right to use the mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive. Mr. Garten verified the representation with a declaration pursuant to 37 C.F.R. §2.20.
23. In spite of its representation, at the time Applicant made the representation, Opposer's Mark was in use by Opposer and Applicant's Mark, as applied to its Original and Amended Streaming Goods or Services, so resembled Opposer's Mark as to be likely to cause confusion, mistake, or deception.
24. Also, at that time, Opposer had legal rights in Opposer's Mark superior to Applicant's rights in Applicant's Mark
25. Also, at that time, Applicant knew Opposer had rights in Opposer's Mark superior to Applicant's rights in Applicant's Mark.
26. Finally, at that time, Applicant believed that a likelihood of confusion would result from Applicant's use of Applicant's Mark.
27. Applicant, in failing to disclose these facts to the PTO at the time it made its representation, knowingly made a material misrepresentation to the PTO in order to procure registration of Applicant's Mark, a registration to which it was not entitled.

28. Applicant intended to procure registration of Applicant's Mark for goods or services involving music in view of Opposer's pending cancellation of Reg. No. 4,038,808 and so that Applicant could rely on registration of Applicant's Mark in dispute of Opposer's Mark and as a deterrent to Opposer's and others' use and registration of marks incorporating the term TRUMP.
29. Applicant made its representation with the intent to deceive the PTO.
30. The PTO relied on the representation in approving Applicant's Mark for publication and publishing Applicant's Mark for opposition.
31. The PTO would not have approved Applicant's Mark for publication and published Applicant's Mark for opposition but for Applicant's false representation.
32. Accordingly, Applicant's actions in the in the filing of its Application constitute fraud.

Conclusion

By reason of the foregoing, registration of Applicant's Mark would be damaging to Opposer.

WHEREFORE, Opposer respectfully requests that its Notice of Opposition be granted and that Application Serial No. 86/969,629 be denied.

Respectfully submitted,

Date: March 8, 2017

A handwritten signature in black ink, appearing to read 'Tom Scharfeld', written over a horizontal line.

Tom Scharfeld
President
Spoonjack LLC